

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

AUG 11 2010

JAMAR J. DRAPER,)
Plaintiff,)
vs.)
JIM BAUMAN, Sheriff,)
Defendant.)

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA
BY Yuk DEPUTY

No. CIV-10-335-W

ORDER

On June 30, 2010, United States Magistrate Judge Valerie K. Couch issued a Report and Recommendation in this matter, and made various findings and recommendations with regard to the three counts set forth in the complaint filed by plaintiff Jamar J. Draper. Draper was advised of his right to object, and the matter came before the Court on a letter [Doc. 15] written by Draper on July 2, 2010.

Because "pro se parties [must] 'follow the same rules of procedure that govern other litigants,'" Nielsen v. Price, 17 F.3d 1276, 1277 (10th Cir. 1994)(quoting Green v. Dorrell, 969 F.2d 915, 917 (10th Cir. 1992)(other citations omitted)), and because Draper had been previously advised that this Court does not consider and/or rule on informal correspondence, see Doc. 12, the Court on July 8, 2010, admonished Draper that he must file a paper that conformed to the Federal Rules of Civil Procedure and the Rules for the United States District Court for the Western District of Oklahoma if he intended to object to Magistrate Judge Couch's Report and Recommendation.

Draper was given until July 21, 2010, to file his objections, if any, to the Report and Recommendation, and he was told that his failure to make timely objection, properly

captioned and styled, to the Report and Recommendation would waive his right to appellate review of the factual and legal issues addressed therein. See Doc. 16.

The record indicates that Draper has not filed a timely objection, and upon review, the Court concurs with Magistrate Judge Couch's suggested disposition of this matter. Draper, a state pretrial detainee, commenced this action seeking monetary relief under title 42, section 1983 of the United States Code. His claims relate to, and arise from, the criminal charges pending against him in the District Court of Logan County, Oklahoma,¹ as well as from a now-dismissed case filed under title 28, section 2254 of the United States Code in this judicial district.²

As Magistrate Judge Couch has found, Counts I and III of Draper's complaint fail to state claims against Bauman, identified as the Sheriff of Logan County, Oklahoma, upon which relief can be granted; thus, under Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), dismissal of these two counts without prejudice is warranted.

Further, because the state court proceedings provide Draper with an adequate forum in which to pursue his contention in Count II of the complaint that he is being subjected to "redundant charges," the Court abstains from further consideration of the

¹Draper is awaiting trial in the District Court for Logan County, Oklahoma, on multiple charges, including burglary in the first degree in violation of 21 O.S. § 1431, robbery with a firearm in violation of 21 O.S. § 801, rape in the first degree in violation of 21 O.S. § 1115, forcible sodomy in violation of 21 O.S. § 888, and kidnapping in violation of 21 O.S. § 741. State v. Draper, No. CF-2009-100.

²On June 22, 2009, Draper filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Draper v. Bauman, No. CIV-09-659-R (W.D. Okla.). The Honorable David L. Russell dismissed that matter without prejudice in August 2009, because Draper had failed to object to the Report and Recommendation issued in that case by United States Magistrate Judge Gary M. Purcell and had likewise failed either to cure a deficiency found in his Motion for Leave to Proceed in Forma Pauperis or to pay the filing fee. See Doc. 8.

merits of the allegations in Count II and finds that dismissal of this count is required under Younger v. Harris, 401 U.S. 37 (1971).

Accordingly, the Court

- (1) ADOPTS the Report and Recommendation [Doc. 14] filed on June 30, 2010; and
- (2) DISMISSES this matter without prejudice.

ENTERED this 11th day of August, 2010.



LEE R. WEST
UNITED STATES DISTRICT JUDGE